HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.21629 of 1996

Dated: 23-11-2006

Between:

B. Nambaiah

… Petitioner

AND

The Revenue Divisional Officer,
Karimnagar and others.

… Respondents

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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O R D E R :

This writ petition has been instituted seeking a relief that the action of the Mandal Revenue Officer, Karimnagar Mandal, in not assigning the land to an extent of Ac.0-02 gts. situated in Sy.No.592 at Kothapally village, Karimnagar Mandal and District, is contrary to the assignment rules. The writ petitioner has also solicited certain ancillary reliefs, including a direction that the petitioner be assigned the land in Sy.No.592 to an extent of
Ac.0-02 gts. by setting aside the proceedings bearing No.B1/4196/93, dated 17-5-1996 passed by the Mandal Revenue Officer.

The writ petitioner asserts that he came into possession of these Ac.0-02 gts. of land situated in Sy.No.592, Kothapally village, Karimnagar Mandal and District, from times immemorial and, therefore, he is entitled to raise permanent constructions on the basement, which he has already raised thereon. The writ petitioner seems to have solicited a patta to be granted in his favour on 31-3-1995 and that the Mandal Revenue Officer through his letter No.B1/4196/93, dated -12-1995 addressed to the Revenue Divisional Officer, Karimnagar, suggesting that even though the land in question is situated in shikam and as it is in possession of the applicant (writ petitioner) and is situated in a high place, and that there is no danger of it being submerged. He also wrote that if the writ petitioner is permitted to

construct a home therein, it will not cause any hindrance to the water flow. Further by allowing the writ petitioner to construct a pacca house thereon, there would not be any possibility of encroachment into the shikam and other lands, therefore, the Mandal Revenue Officer was of the opinion that the claim of the petitioner for grant of patta in his favour over an extent of Ac.0-02 gts. of land in Sy.No.592 of Kothapally village, deserves consideration. However, sanity seems to have been restored and by his proceedings bearing Memo Ref.No.B1/4196/93, dated 17-5-1996, the very same Mandal Revenue Officer, Karimnagar Mandal has passed an order pointing out that as the land in Sy.No.592 of Kothapally village is situated on the bunds of Ora Cheruvu and hence it is not possible to grant patta in favour of the writ petitioner. This proceeding is what has been challenged by the writ petitioner.

Sri M. Rama Rao, learned counsel for the petitioner, would urge that the action of the Mandal Revenue Officer, Karimnagar, in declining to grant patta in favour of the writ petitioner on the ground that the land in question has been situated on the bund of Ora Cheruvu is contrary to the principles enunciated in the Rules for Assignment of House Sites in Villages and Towns in Telangana Area (for brevity 'the Rules'), which have been framed in exercise of the powers conferred by Section 172 of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli. He places reliance upon Rule 4 thereof, which *inter alia* reads thus:

> "(4) The assignment of lands under these rules within 30 feet from the boundary of the tank, channel, canal or well is strictly prohibited. Land at the disposal of Government lying within these limits should be reserved and entered in the Prohibitive Order Book. No Collector should assign lands without the previous permission of the Board."

Since the respondents have not measured the distance of the land in occupation of the writ petitioner from the boundary of the tank

and since they have not found it to be lying within the prohibited distance of 30 feet, hence, proceeds the argument, rejection of his case for grant of house site patta is illegal.

Learned counsel for the petitioner would also urge that there are several other individuals of Kothapally village, who have been permitted to raise permanent structures, like compound walls etc., in the vicinity of the land in occupation of the writ petitioner, and without noticing this fact, the claim of the writ petitioner for grant of patta has been rejected.

The learned counsel would next urge that the Mandal Revenue Officer has solicited instructions from the Irrigation Department as to whether the land in occupation of the writ petitioner would fall within the full tank level of Ora Cheruvu and in response thereto, the Deputy Executive Engineer of Irrigation Department has informed the Mandal Revenue Officer on
12-7-1995 that the land in occupation of the writ petitioner is not coming under submergence at full tank level i.e., + 30.48 mts., inasmuch as, the land in question is standing at + 32.72 mts. Therefore, the learned counsel would contend that the rejection to grant house site patta in favour of the writ petitioner is totally arbitrary and unjust.

The learned Government Pleader for Revenue would contend that the writ petitioner has no right of any manner to demand assignment of a particular land of her choice and that the State is entitled to consider each application on its merits.

I have given anxious consideration to the entire matter. While the writ petitioner *perse* does not have any right, statutory or otherwise, to insist upon the State to assign the land in question only because he or his fore-fathers have come to occupy the same, but the fact remains

that the lands in Sy.No.592 of Kothapally village are described as standing on the bund of an Irrigation Tank (Ora Cheruvu). Therefore, in my considered opinion, no structures, either permanent or temporary, ever be allowed to come anywhere near these water bodies. These water bodies have got to be preserved and protected by everyone concerned. Rule 4 of the Rules, to which a reference has already been made supra, would only indicate that the assignment of lands within 30 feet from the boundary of a tank, channel, canal or well is strictly prohibited. It does not mean that the moment 30 feet distance is over, there shall be compulsory assignment of land in favour of the eligible beneficiaries. What has been contemplated and conceived by the rule making authority is to ensure that atleast a safe minimum distance of 30 feet from the boundary of every water body will be saved and preserved from any possible intrinsic act of assignment by the State or its Agencies. Therefore, the contention canvassed by the learned counsel that the land held under the occupation of the writ petitioner is well beyond 30 feet distance limit, and hence, deserves for grant of house site patta is devoid of any merit on this count.

Equally the other two contentions are also lacking any merit. While entertaining the application of the writ petitioner soliciting grant of patta over the land under his occupation, all that the Mandal Revenue Officer opined was that the land may not suffer submergence and it may not cause any hindrance to the water flow. After all, those are not the only factors which weigh in the matter of grant of house site pattas in proximate closeness of the water bodies. The Mandal Revenue Officer has realized that the land in question is situate on the very bund of the water body and, therefore, he has declined to grant patta, and rightly so in favour of the writ petitioner.

Dealing with the next contention that there are other structures,

which have been permitted to come up in the vicinity of the land in occupation of the writ petitioner, though no such specific Public Interest Petition has been brought-forth by the writ petition, nonetheless, since he has brought the same to the notice of this Court, I consider it appropriate that the Revenue Divisional Officer, Karimnagar, should be directed to inspect the locality in question and take note of any such illegal constructions, which have come up in the tank bed of Ora Cheruvu of Kothapally village and initiate appropriate action against such offensive structures, which have been brought up in the bed of that water body. Such action should emanate from the Revenue Divisional Officer, as expeditiously as possible, at any rate, within a period of six months from today. The Registry is directed to mark a copy of this order to the District Collector and Magistrate, Karimnagar District, for taking appropriate follow up action.

The writ petition is accordingly dismissed with the above observations. No order as to costs.

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NOOTY RAMAMOHANA RAO, J

23-11-2006
Msr.

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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23-11-2006
(Msr)